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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

10 AK VICTORY, INC., a Washington for-
11 profit corporation

11 Plaintiff,

12 v.

13 MISAEL FLETES-OROZCO, an individual,

14 Defendant.
15

IN ADMIRALTY

Case No. 2:21-cv-1589

16 **COMPLAINT FOR DECLARATORY**
17 **JUDGMENT**

18 COMES NOW Plaintiff AK Victory, Inc. (“AK Victory”) and, for a cause of action
19 for declaratory judgment against Defendant Misael Fletes-Orozco, alleges as follows:

20 **PARTIES**

21 1. Plaintiff AK Victory is and was at all pertinent times a corporation organized
22 and existing under the laws of the State of Washington and with a principal place of business
23 in Seattle, Washington. AK Victory is the owner and operator of the fishing vessel
ALASKA VICTORY and was Defendant’s employer in September of 2019.

2. Defendant is a seaman and a resident of Mt. Vernon, Washington.

3. Defendant's employment with AK Victory required he perform the duties of a seaman aboard the ALASKA VICTORY in September of 2019.

JURISDICTION AND VENUE

4. This is an action for a declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 for the purpose of determining questions of actual controversy between the parties, namely, AK Victory's obligations, if any, to provide Defendant maintenance and cure under the general maritime law.

5. This action, arising out of a seaman's medical condition occurring on a vessel on a navigable water of the United States, is an admiralty and maritime dispute within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and the Court's jurisdiction over this action rests in 28 U.S.C. § 1333.

6. Defendant resides within the Western District of Washington, therefore venue for this admiralty action is proper in this Honorable Court.

FACTS

7. Defendant was exposed to ammonia gas during his employment aboard the ALASKA VICTORY on or about September 27, 2019. Defendant claims he suffers from two medical conditions as a result of this ammonia exposure referred to herein as the “First Medical Condition” and the “Second Medical Condition.”

8. Following the ammonia event on September 27, 2019, Defendant sought medical treatment for the aforementioned medical conditions.

9. AK Victory provided Defendant with maintenance and cure following the subject ammonia event.

1 10. Defendant claims he has not reached maximum medical cure for either of his
2 two medical conditions. As such, Defendant claims he is entitled to maintenance and cure on
3 an ongoing basis.

4 11. AK Victory retained a medical doctor and expert regarding Defendant's First
5 Medical Condition to evaluate Defendant's medical records related to the ammonia event.
6 This doctor issued a report with his findings. This report was provided to Defendant. This
7 doctor opines, with regard to the First Medical Condition, Defendant reached maximum
8 medical cure no later than December 14, 2020.

9 12. AK Victory also retained a medical doctor and expert regarding Defendant's
10 Second Medical Condition to evaluate Defendant's medical records related to the ammonia
11 event. This doctor also issued a report with his findings. This report was provided to
12 Defendant. This doctor opines that the treatment Defendant is receiving from his current
13 treatment provider for the Second Medical Condition is inadequate and not likely helpful.
14 This doctor also opines the treatment Defendant is receiving from his current treatment
15 provider for the Second Medical Condition has prolonged Defendant's symptoms and
16 unnecessarily hampered Defendant's return to work.

17 13. Under the general maritime law, a seaman like Defendant has a duty to
18 mitigate his medical expenses and his employer is not responsible for overly expensive or
19 unnecessary medical services.

20 14. The treatment being provided to Defendant for his Second Medical Condition
21 is making Defendant have worse symptoms than necessary and unnecessarily extending the
22 time it will take Defendant to get better and reach maximum medical cure.
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1 15. On September 20, 2021, AK Victory advised Defendant of its expert doctors'
2 opinions. AK Victory offered to arrange for Defendant to see a new treatment provider for
3 the Second Medical Condition so that Defendant could receive appropriate treatment.
4 Defendant refused.

5 16. By insisting on continuing with a treatment provider providing inadequate
6 treatment, Defendant is unnecessarily extending the time it will take to reach maximum
7 medical cure.

8 17. Defendant is failing to mitigate his maintenance and cure expenses.

9 18. AK Victory provides Defendant with maintenance and cure on an ongoing
10 basis.

11 **CLAIM FOR DECLARATORY RELIEF – MAINTENANCE AND CURE**

12 19. Plaintiff reasserts all preceding paragraphs as if fully set forth herein.

13 20. Under the maritime doctrine of maintenance and cure, a ship owner is
14 obligated to pay a seaman, who falls ill or becomes injured while in the service of the ship,
15 maintenance and cure only until the seaman reaches maximum medical cure, the seaman's
16 condition permanently stabilizes, or the seaman's condition cannot be improved any further.

17 21. Under the maritime doctrine of maintenance and cure, a ship owner is only
18 obligated to pay for curative medical treatment.

19 22. Under the maritime doctrine of maintenance and cure, an injured seaman has
20 an obligation to speed his recovery, seek appropriate medical treatment, and mitigate
21 maintenance and cure expenses.
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1 30. That, with regard to the Second Medical Condition, the Court declare AK
2 Victory has no obligation under the general maritime law to provide Defendant with
3 maintenance while Defendant fails to speed his recovery and mitigate maintenance and cure;
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5 31. For attorneys' fees and costs as permitted under the law; and

6 32. For such other and further relief as the Court may deem just and proper.
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8 DATED this 24th day of November, 2021
9

10 /s/David C. Bratz

11 DAVID C. BRATZ, WSBA # 15235

12 /s/Nathan J. Beard

13 NATHAN J. BEARD, WSBA #45632

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